

## Testimony for CECC Hearing Wang Tiancheng

In 1978, Deng Xiaoping initiated China's "Reform and Opening Up." One of the most important aspects of reform is the strengthening of the construction of the legal system. In the past 30 years, the primary reflections of progress in the legal domain have been in the following three areas: First, the formulation of a large number of laws and the establishment of a relatively complete body of laws that covers a variety of fields. In the era of Mao Zedong, China only had a small number of laws. Today it is already becoming difficult to clearly calculate exactly how many laws and regulations there really are. Second, the fostering of over a million talented legal specialists and the establishment of an approximately 140,000-person-strong contingent of lawyers. With the exception of the lowest levels of courts (that is to say, the county-level courts), the majority of other courts' judges have now received higher education in legal disciplines. Third, the successive establishment of many law schools and legal departments. Up to today, there are already 600 such schools and departments. It is becoming more and more difficult for graduates of law schools and departments to find work.

The above progress is related to active promotion by the government. There has been additional progress, but it is in no way the result of active government promotion. However, I believe it will have a significant influence on future legal reform. This is the change in thinking of legal researchers and educators, as well as the thinking of Chinese society as a whole. Jurists' thinking is increasingly liberalized, and there are more and more people who dare to candidly express their thoughts. In the past 30 years, jurists have performed a special role in the improvement of Chinese legislation and certain laws, and I believe this sort of role will continue.

However, as long as the one-party autocratic political system does not change, one should not overestimate jurists' role in future Chinese legal reform. Jurists can facilitate some small changes and repairs to Chinese law, but will not be able to make it develop into a free body of law.

In the legal domain, China faces three very serious problems: one, there exists a set of laws and systems which deprive citizens of basic human rights and freedoms; two, the judiciary is not independent and is controlled by the Communist Party and administrative departments; three, the government, as the enforcement mechanism, does not receive outside supervision. These three issues are all products of the one-party autocratic political system.

The largest obstacle to China establishing rule of law and ensuring human rights is the one-party autocratic political system. How to facilitate this kind of transformation of the political system is the crux of the issue. I certainly don't believe that small changes to Chinese law, effected in dribs and drabs, will eventually lead to the democratization of China. However, I believe that criticizing the Chinese laws and institutions that oppose human rights, and creating pressure from public opinion, is beneficial to accelerating the arrival of democratization.

I think the greatest impetuses for accelerating the reform of Chinese law in the direction of guaranteeing human rights are the people within China's dissatisfaction with reality and the gradual increase in their desire and call for democracy, human rights, and rule of law. At the same time, pressure from the international community is also extremely important.

From a viewpoint of ensuring fundamental human rights and facilitating a transformation to democracy, I hereby raise the following suggestions to each respected Member of Congress:

First, urge the Chinese government to ratify the United Nations' "International Covenant on Civil and Political Rights." The Chinese government already signed this convention in 1998, but 10 years have passed and it has still not been ratified. If the Chinese government ratified this convention, you could then take the next step and request that it amend or abolish the laws that conflict with the convention.

Second, you not only need to follow individual cases where the Chinese government infringes on human rights, you also need to monitor the relevant legal articles and texts and point out where they are in opposition with human rights. If the laws and system do not change, the Chinese government's softening or changing in certain individual cases does not indicate improvement in the state of human rights, because similar incidents involving human rights infringement will still occur.

Third, please monitor with particular focus the following laws and institutions that are in opposition to human rights:

1. The assembly and demonstration law. This law was passed in October 1989, which was four months after the June 4th massacre. According to this law, assemblies and demonstrations must first obtain police approval. In reality, the freedom of assembly and demonstration has been abolished.
2. The provision in the Criminal Law related to the crimes of plotting to subvert state power and inciting subversion of state power. The PRC Criminal Law does not have the use of violence or propagating the use of violence as a prerequisite for engaging in this type of crime. All the people who have been penalized under these charges were those who published expressions of opinion criticizing the government, or were people exercising their right to freedom of association and demonstration.
3. The "Regulations on Religious Affairs" issued by China's State Council. These regulations were passed in 2004, and they endowed the government with the power to interfere with religious groups and religious activities, the main purpose of which was to suppress the rapid expansion of Christianity within China in the past few years.
4. The Reeducation Through Labor system. This is a kind of forced labor punishment which deprives people of their personal liberties. In fact, it is no different than being sentenced to prison, but it does not go through a trial in a court of law, and the police agencies are the sole decisionmakers. This has already been going on in China for decades. Mao Zedong used it in the past to persecute hundreds of thousands of so-called "rightists." Today, every level of government in China frequently uses it to persecute dissidents, Falun Gong practitioners, Christian preachers, and an immense number of petitioners.
5. The state of detention centers. In China, once a person enters a detention center, he is completely cut off from the world. His family cannot go to visit him, and it is difficult for his lawyer to see him. No one knows what the police might do to him. And yet, the most important stage in the criminal procedure is exactly this stage. The police will interrogate him time and again. The trial in a court of law is often just a formality.

Fourth, urge the Chinese government to establish an effective system for investigating constitutional violations. This is, to establish a constitutional court or to allow ordinary courts to accept cases concerning the Constitution, to investigate whether laws or administrative orders violate the Constitution, and to provide citizens with the new possibility of safeguarding their rights. The PRC Constitution promises various basic human rights and freedoms, but the legal and regulatory system nullifies them.

Finally, I have one last statement: having the Chinese government accept these criticisms and demands is certainly not easy, but I believe that unremitting criticism and pressure might eventually obtain results, and benefit the facilitation of democratization in China.